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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

BENSON THOMAS HODGES,

Defendant and Appellant.

C080018

(Super. Ct. No. 14F7691)

Sheriff's deputies searched the mobile home where defendant Benson Thomas Hodges was staying. They mistakenly believed he was subject to searchable probation. In all likelihood, defendant had been confused with defendant's son, who *was* subject to searchable probation. Defendant now appeals from the denial of his motion to suppress evidence. He contends the trial court erred because substantial evidence did not support a finding of good faith. We conclude the trial court did not err in denying the suppression motion.

## BACKGROUND

At the hearing on suppression of evidence, a clerk of the Shasta County Superior Court testified along with a sheriff's deputy who conducted the search.

### *The Clerk*

The clerk testified she had received a call from the deputy asking about defendant's probation terms. The deputy provided defendant's name, "Benson Hodges," and the clerk searched the database for it. She reported defendant was subject to a search condition.

Sometime later (after the search had been conducted), the deputy called again and asked the clerk to send him the judgment and sentencing information reflecting defendant's search condition. She pulled the file and saw the box for warrantless search was not checked.

At the suppression hearing, she testified that when she told the deputy defendant had a search condition, she believed she had actually looked in the entry for defendant's son, "Benson Hodges the Third."

The clerk could not recall if the deputy had given her descriptive terms other than defendant's name. The name "Benson Hodges" had multiple entries in the database. The clerk testified she "would like to think" she would have asked for more descriptive terms had she seen more than one Benson Hodges entry in the system. She also testified she would not have picked an entry at random.

### *The Sheriff's Deputy*

The sheriff's deputy testified that after learning defendant lived in the mobile home, he contacted dispatch, using the mobile data computer in his patrol car, to determine if defendant was subject to a search condition.

He entered into the computer defendant's name and apparently also defendant's date of birth.<sup>1</sup> He had defendant's date of birth "based on prior contacts."<sup>2</sup> Dispatch reported defendant had a search term.

The deputy then contacted the court clerk's office. He gave the clerk defendant's name and date of birth. He did not provide other information, such as defendant's driver's license or social security number. The clerk reported defendant had a search term. Sheriff's deputies then searched the mobile home.

When the deputy returned to the office, he brought up defendant's information on the database and did not find a search condition. He then contacted the court clerk's office again and asked the clerk to pull defendant's file. She reported defendant did not have a probation search term. But she did not say she had confused defendant with defendant's son.

At the hearing, the deputy testified he is familiar with defendant's son, "Benson Hodges the Third," and knew the son had had contacts with the criminal justice

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<sup>1</sup> The record is somewhat ambiguous as to whether he entered the date of birth into the computer:

"Q: What type of information would they [dispatch center] have provided you?"

"A: Without getting specific, generally just provide the name and date of birth of the individual I request to receive information on, and the information was whether or not there were search terms. And the message I received back was that there were search terms and he was on court probation.

"Q. Does it provide any other descriptors, other than just name and date of birth?"

"A: The date of birth would have been provided by myself based on prior contacts."

<sup>2</sup> When asked at the hearing if he remembered defendant's date of birth, he replied it was not in his report, and he did not remember the specific date of birth.

system. But he did not know the son was subject to searchable probation at the time of the search.

### ***The Trial Court's Findings***

The trial court denied defendant's suppression motion. It found the deputy had given the date of birth to the clerk, but the clerk failed to enter it into the system. It also found the clerk and the court system were the source of the error.

Defendant later pleaded no contest to possession of marijuana. (Health & Saf. Code, § 11357, subd. (c).)

### **DISCUSSION**

On appeal, defendant challenges the denial of his suppression motion. He argues the prosecution failed to meet its burden of establishing the officer acted in good faith, and he argues insubstantial evidence supports the trial court's factual findings in support of its ruling. We reject these arguments.

Under the good faith exception to the exclusionary rule, evidence will not be suppressed if the law enforcement officers had an objectively reasonable belief that the search and seizure was constitutionally permissible. (*People v. Pearl* (2009) 172 Cal.App.4th 1280, 1292; see also *United States v. Leon* (1984) 468 U.S. 897, 922.) "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." (*Herring v. United States* (2009) 555 U.S. 135, 144 [172 L.Ed.2d 496] (*Herring*).) The exclusionary rule applies to "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." (*Ibid.*) It does not apply to "isolated negligence attenuated from the arrest." (*Id.* at p. 137.)

In reviewing the denial of a motion to suppress, we defer to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Tully* (2012) 54 Cal.4th 952, 979.) We will uphold the trial court's factual findings as to

recklessness or systemic error where supported by substantial evidence. (*Herring, supra*, 555 U.S. at p. 147, fn. 5; *People v. Robinson* (2010) 47 Cal.4th 1104, 1126.) But we independently determine, on the facts found, whether the search was reasonable under the Fourth Amendment. (*Tully*, at p. 979.)

Here, defendant first argues the trial court's finding that the error was attributable to court staff rather than law enforcement is unsupported. But assuming this is so, it does not automatically render the good faith exception inapplicable. (See *Herring, supra*, 555 U.S. at pp. 143-144.) Exclusion is triggered only if law enforcement officers' conduct is sufficiently deliberate and culpable. (*Id.* at p. 144.) That threshold is not met here.

Defendant next argues the finding that the deputy gave defendant's date of birth to the clerk, and the clerk failed to enter it into the system, relies on inherently incredible evidence. But assuming *arguendo* defendant is correct, it would not warrant exclusion because, under any reasonable scenario supported by the record, the conduct does not rise beyond mere negligence.<sup>3</sup> Indeed, the unique circumstances all but preclude a finding of systemic or recurring negligence. And the record does not support a finding of more culpable conduct: the clerk testified she would not have selected an entry at random; the deputy attempted to verify defendant's search status through two sources; and after the search, the deputy reverified defendant's status at the office.

Finally, defendant argues because the deputy knew there was more than one person in the local criminal system with the name, "Benson Hodges," it was incumbent on him to ensure the Benson Hodges who was subject to searchable probation was the same Benson Hodges who lived in the mobile home. Defendant offers no support for his

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<sup>3</sup> The deputy may have provided the wrong date of birth to both dispatch (via his mobile data computer) and the clerk. Alternatively, the deputy may not have provided a date of birth, and both dispatch and the clerk inadvertently missed the multiple entries.

assertion. And further, the record reflects the deputy did not know defendant's son was subject to a search condition. Under the circumstances, the deputy's conduct could be no more than mere negligence.

We conclude the trial court did not err in denying the suppression motion.

#### DISPOSITION

The judgment is affirmed.

\_\_\_\_\_/s/  
HOCH, J.

We concur:

\_\_\_\_\_/s/  
HULL, Acting P. J.

\_\_\_\_\_/s/  
MURRAY, J.